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In the Supreme Court of the United States

OCTOBER TERM, 1994

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the standing of the Director, Office of Workers' Compensation Programs in the United States Department of Labor, to petition the courts of appeals for review of a decision of the Benefits Review Board under Section 21(c) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 921(c), is limited to issues that affect the Director's pecuniary interest or disrupt a specific administrative function.

II

PARTIES TO THE PROCEEDINGS

The Director of the Office of Workers' Compensation Programs in the United States Department of Labor was the petitioner in the proceeding below. The employer, Newport News Shipbuilding and Dry Dock Company, was the respondent, and Jackie Harcum was designated the claimant.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 8 F.3d 175. The decision of the Benefits Review Board (Pet. App. 27a-36a) is unreported. The decision of the administrative law judge (Pet. App. 37a-62a) is reported at 23 Ben. Rev. Bd. Serv. (MB) 515.

JURISDICTION

The court of appeals entered its judgment on October 29, 1993, and denied petitions for rehearing on January 7, 1994. Pet. App. 25a-26a. On March 28, 1994, the Chief Justice extended the time within which to file a petition

for a writ of certiorari to and including May 7, 1994. The petition for a writ of certiorari was filed on May 9, 1994 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent provisions of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921(b), 921(c), 921(d), 921a, 939(a), 939(c)) are reprinted at Pet. App. 63a-66a. Pertinent provisions of the Department of Labor regulations (20 C.F.R. 701.201, 701.202, 702.333, 801.102, 802.410) are reprinted at Pet. App. 67a-68a.

STATEMENT

A. The Statutory Framework

1. The Longshore and Harbor Workers' Compensation Act (LHWCA or Act), 33 U.S.C. 901 *et seq.*, creates a comprehensive federal scheme to compensate maritime workers injured or killed while employed upon the navigable waters of the United States. Under the Act, employers are liable up to a statutory maximum for covered injuries without regard to fault as a cause for the injury or death, and have certain duties to furnish medical services in connection with injuries. 33 U.S.C. 904, 906-909. In most instances, the employer's liability under the Act is exclusive and in place of all other liability to the employee on account of the injury or death. 33 U.S.C. 905 and 933(i).

Congress directed the Secretary of Labor to "administer the provisions" of the LHWCA and to issue any necessary rules and regulations. 33 U.S.C. 939(a). The Secretary established the Office of Workers' Compensation Programs (OWCP) and delegated the responsibility for administration of the benefits program under

the LHWCA to the OWCP Director (Director). See 20 C.F.R. 701.201, 701.202(a).[1]

Employees or survivors seeking compensation under the LHWCA must notify the employer and file a claim with a district director of OWCP. 33 U.S.C. 912 and 913(a).[2] Compensation generally is to be paid promptly to eligible persons without issuance of a formal compensation award. 33 U.S.C. 914(a). A district director may, upon his own initiative at any time,

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[1] The history of the authority to administer the Act and the delegation of that authority is set forth in 20 C.F.R. 701.203. The statutory language speaks in terms of powers vested in the Secretary. In light of the Secretary's delegation of those responsibilities to the Director, however, we refer throughout this brief to the Director rather than the Secretary as the bearer of the statutory duties.

In addition to administering the LHWCA benefits program, the Director is responsible for administration of the benefits programs under the Defense Base Act, 42 U.S.C. 1651 *et seq.*, the District of Columbia Workmen's Compensation Act, 36 D.C. Code 501 *et seq.* (1973), the Outer Continental Shelf Lands Act, 43 U.S.C. 1331, the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171 *et seq.*, and Title IV of the Federal Mine Safety and Health Act of 1977, as amended (known as the Black Lung Benefits Act (BLBA)), 30 U.S.C. 901 *et seq.* See 20 C.F.R. 701.202(b)-(f). The first four of those Acts are direct extensions of the LHWCA, and the same regulations generally govern the administration of the programs under those Acts, with a few exceptions. See 20 C.F.R. 701.101, 701.102. The regulations governing administration of the BLBA are set forth immediately following the LHWCA regulations. See 20 C.F.R. 718 *et seq.*

[2] Congress provided for the appointment by the Secretary of "deputy commissioners," 33 U.S.C. 940(a), who are now referred to as "district directors" for administrative purposes. See 20 C.F.R. 701.301(a)(7), 702.105. District directors, under the authority of the Secretary and Director, perform much of the day-to-day administration of the Act.

investigate a case in which payments are being made without an award. 33 U.S.C. 914(h)(1), 919(c). If a dispute regarding a claim arises, a district director must conduct an investigation and "take such further action as he considers will properly protect the rights of all parties." 33 U.S.C. 914(h)(2). District directors have authority to make a compensation award. 33 U.S.C. 914. If a district director is unable to resolve a claim informally, the claim is forwarded to an administrative law judge (ALJ). 33 U.S.C. 919(d).

ALJs are empowered to conduct formal hearings in compliance with the provisions of 5 U.S.C. 554, and to issue compensation orders. 33 U.S.C. 919(c), (d) and (e); 20 C.F.R. 702.301-702.317; 702.331-702.351. Implementing regulations provide that the claimant and the employer (or its insurance carrier) are necessary parties for a hearing before an ALJ. 20 C.F.R. 702.333(a). The Solicitor of Labor or his designee may participate in ALJ hearings on behalf of the Director as an "interested party." 20 C.F.R. 702.333(b).

Appeals raising a substantial question of law or fact may be taken to the Benefits Review Board (Board) "by any party in interest" from ALJ decisions with respect to benefit and compensation claims under the Act. 33 U.S.C. 921(b)(3); 20 C.F.R. 801.102. The terms "party" and "party in interest" are defined to mean "the Secretary or his designee and any person or business entity directly affected by the decision or order from which an appeal to the Board is taken." 20 C.F.R. 801.2(a)(10). The Board reviews an ALJ's decision to determine if it is supported by substantial evidence and is in accordance with the law. 33 U.S.C. 921(b)(3); 20 C.F.R. 801.102.

Decisions by the Board are reviewable by the courts of appeals. 33 U.S.C. 921(c). "Any person adversely

affected or aggrieved by a final order of the Board may obtain a review of that order" in a court of appeals. *Ibid.* The Director, as designee of the Secretary "responsible for the administration and enforcement" of the Act, "shall be deemed to be the proper party on behalf of the Secretary of Labor in all review proceedings conducted pursuant to section 21(c)." 20 C.F.R. 802.410(b).

2. In addition to her statutorily established role in the claim adjudication process, the Director performs a wide range of duties under the Act that promote the public interest, including providing assistance to individual claimants. For example, the Director must provide information and assistance in the claim adjudication process to any claimant who requests it, and she is permitted to provide claimants with legal assistance in processing a claim. 33 U.S.C. 939(c). The Director, through the district directors, reviews settlements to ensure that they are not inadequate and not procured by duress. 33 U.S.C. 908(i). She actively supervises the medical care rendered to injured employees, 33 U.S.C. 907(b), and provides information about medical and rehabilitative services, 33 U.S.C. 939(c). District directors may also bring actions in district court to enforce compensation awards, 33 U.S.C. 921(d), and the Director administers a special fund for payment of benefits in specified circumstances, 33 U.S.C. 944.

B. The Pending Case

1. Claimant Jackie Harcum, an employee of respondent Newport News Shipbuilding and Dry Dock Co., suffered a work-related, disabling back injury and filed a claim for benefits under the Act. Pet. App. 2a. The claim was referred to an ALJ for a hearing to resolve several disputed issues, including whether claimant Harcum was entitled to benefits for total (not

merely partial) disability from the date that he stopped work at respondent's shipyard (May 6, 1988) until the date he found alternative employment (February 16, 1989). *Id.* at 6a, 39a.[3]

The ALJ applied the rationale of the Board's decision in *Stevens* v. *Lockheed Shipbuilding Co.*, 22 Ben. Rev. Bd. Serv. (MB) 155 (1989), which held that total disability becomes partial when a claimant regains residual wage-earning capacity, and the partial disability relates back to the date of a claimant's maximum medical improvement. The ALJ thus reasoned that claimant Harcum was entitled only to partial (rather than total) disability benefits as of May 6, 1988, because that was the date he left employment with respondent and because the date of his maximum medical improvement had already passed. Pet. App. 6a, 56a-57a. The ALJ held that Harcum

[3] Respondent also asserted that Harcum suffered from a preexisting permanent partial disability that contributed to his current disability, and that respondent consequently was entitled to a reduction in the amount of benefits it was required to pay because the special fund administered by the Secretary should assume payment for part of the benefits under Section 8(f) of the Act. Pet. App. 7a. See 33 U.S.C. 908(f) (special fund assumes liability for compensation payment for injury after 104 weeks of permanent disability if claimant had preexisting permanent partial disability that combined with his compensable injury to render him more disabled than he would have been from the injury alone); 33 U.S.C. 944(a).

The ALJ and the Board agreed with respondent that Section 8(f) applied to this case. Pet. App. 7a, 33a-36a, 59a-61a. The court of appeals, however, rejected both the Director's and respondent's interpretations of Section 8(f), reversed the Board's ruling on that issue, and remanded the case for further proceedings. Pet. App. 14a-24a. Although the Director disagrees with the court of appeals' Section 8(f) ruling, she did not seek this Court's review of that ruling.

should be deemed to have regained residual wage-earning capacity as of May 6, 1988, and that he therefore should have received compensation after that date based only on a partial disability. *Id.* at 57a.

2. The Director appealed the ALJ's ruling to the Board pursuant to Section 21(b)(3) of the LHWCA, 33 U.S.C. 921(b)(3). Pet. App. 7a. The Director contended that the claimant was entitled to benefits based on total disability until February 16, 1989, when he secured other employment. Claimant Harcum did not appeal, but did respond in support of the Director. *Id.* at 29a. Respondent urged affirmance. *Ibid.*

The Board affirmed the ALJ's ruling, although it clarified the underlying rationale. The Board vacated the ALJ's reliance on its *Stevens* ruling because that decision had subsequently been reversed on judicial review. Pet. App. 29a-31a; *Stevens* v. *Director, OWCP*, 909 F.2d 1256 (9th Cir. 1990), cert. denied, 498 U.S. 1073 (1991). The Board affirmed, however, on the rationale that respondent's uncontradicted evidence showed that there was suitable alternative employment for Harcum as of May 1988, and that Harcum had not shown that he was unable to obtain such employment. Pet. App. 31a-33a. The Board also ruled that a statement by respondent to Harcum that it would determine whether it had a light-duty position available for him, and its subsequent hiring of a vocational consultant to assist Harcum in securing alternative employment, did not affect his obligation to show inability to find other employment, because respondent was not under any obligation to rehire Harcum or to find him an actual job offer. *Id.* at 32a-33a. The Board therefore concluded that Harcum was only partially disabled as of May 1988.

3. The Director filed a petition in the court of appeals for review of the Board's decision pursuant to 33 U.S.C.

921(c). Claimant Harcum did not file a petition for review. In response to an inquiry from the court of appeals (following the Director's motion to amend the case caption and respondent's statement that it did not object), Harcum stated that he had not appealed, but that the Director could pursue the case as she chose. See Attachments A and B to Respondent's Answer to Petitioner's Petition for Rehearing. The court of appeals granted the Director's motion and amended the caption to show Harcum as a "claimant."

The Director contended on judicial review that the Board usurped the ALJ's fact-finding role with regard to its holding that respondent had established that there was suitable alternative employment for Harcum. The Director also argued that, even if respondent had made a showing of suitable alternative employment, Harcum had legitimately relied on respondent's vocational rehabilitation program, rather than independently seeking work, during the period in question. Thus, the Director argued that the Board's decision erroneously denied Harcum total disability benefits for the period between May 1988 and February 1989. Pet. App. 2a.

The court of appeals raised, sua sponte, the question of the Director's standing to appeal. It concluded that the Director did not have standing to petition for review of the Board's ruling with regard to the degree of Harcum's disability. Pet. App. 9a n.1, 13a-14a. The court reasoned that 33 U.S.C. 921(c), which permits "[a]ny person adversely affected or aggrieved by a final order of the Board" to obtain judicial review of that order, "codifies the constitutional requirement that limits standing to those persons who can allege 'that they personally have suffered or imminently will suffer an injury.'" Pet. App. 9a n.1 (quoting E. Chemerinsky, *Federal Jurisdiction* § 2.3.2, at 52 (1989)). In the court's view, the Director

suffers an injury only when a Board decision "alter[s] the Director's ability to carry out his or her responsibilities under the LHWCA or to protect the fiscal integrity of the special fund." Pet App. 14a.

In holding that the Director lacks standing, the court of appeals relied on *Director, OWCP* v. *Donzi Marine, Inc.*, 586 F.2d 377 (5th Cir. 1978). Pet. App. 10a-12a. The court explained that in *Donzi Marine*, the Fifth Circuit held that the Director "would have standing only if an interest of the Director arising from his or her specifically delegated responsibilities was adversely affected by the Board's decision." *Id.* at 10a. The court indicated that, under the *Donzi Marine* rationale, the Director "may redress Board decisions that adversely affect the Director's legitimate administrative interests. * * * For example, if a Board decision substantially augmented the nature of the administrative duties delegated to the Director, increased the Director's necessary expenditure of administrative resources, or created confusion as to how the Director was to carry out specific functions, the Director's responsibilities under the LHWCA would be bound up sufficiently with the merits of the appeal to evidence a cognizable administrative injury." *Id.* at 11a, citing *Donzi Marine*, 586 F.2d at 381-382.

The court of appeals noted that it had adopted the logic of *Donzi Marine* in *Director, OWCP* v. *Newport News Shipbuilding & Dry Dock Co. (Langley)*, 676 F.2d 110 (4th Cir. 1982), where it had questioned whether "the Board's decision sufficiently implicated an administrative or economic interest of the Director so as to give rise to a redressable injury." Pet. App. 13a. The court treated its decision in *Langley* as holding that the Director had standing because of his interest in

protecting the fiscal integrity of the special fund. *Ibid.*, citing 676 F.2d at 114.[4]

The court concluded that the Director had standing to seek review of the portions of the Board's decision that would result in increased payments from the special fund administered by the Director (see note 3, *supra*), but did not have standing to appeal the issue of the degree of the claimant's disability during the period in question. The court reasoned that although the Director contended that the Board misapprehended the LHWCA's requirements, the Board's conclusion as to when the claimant's disability became partial neither altered the Director's ability to carry out her responsibilities under the LHWCA nor affected the fiscal integrity of the special fund. Pet. App. 13a-14a.[5]

SUMMARY OF ARGUMENT

The standing of the Director of the Office of Workers' Compensation Programs to seek judicial review under 33 U.S.C. 921(c), as a person "adversely affected or aggrieved" by a final order of the Benefits Review Board (Board) in compensation claim cases under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* (LHWCA), is not limited to issues that directly affect the Director's pecuniary interest or

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[4] The court below also noted its own prior holding that the Director is not a proper respondent to a petition for review under 33 U.S.C. 921(c). Pet. App. 12a n.2 (citing *I.T.O. Corp.* v. *Benefits Review Bd.*, 563 F.2d 646, 648 (4th Cir. 1977) (en banc), reinstating in pertinent part 542 F.2d 903 (1976), vacated and remanded, 433 U.S. 904 (1977)). But see note 9, *infra* (other court of appeals holdings that Director is proper respondent).

[5] The court denied the Director's petition for rehearing and suggestion of rehearing en banc on the standing issue. Two judges voted to rehear the case en banc. Pet. App. 25a-26a.

disrupt a specific administrative function. Through the LHWCA, Congress conferred broad administrative and enforcement responsibilities on the Director, which give the Director a significant stake in the correct interpretation of the Act and its consistent application. The elimination of uncertainties and inconsistencies in the Act's implementation is important to the overall efficiency of the administrative claims process. It enhances the Director's ability to fulfill her responsibilities to ensure that the Act achieves its social welfare goals. Congress also imposed on the Director specific legal duties to participate directly in the claim adjudication process and to assist claimants, thereby vesting the Director with legally cognizable interests with regard to the correctness of claim determinations. The history of the LHWCA (including the Black Lung Benefits Act, in which Congress generally incorporated the LHWCA procedures) confirms that Congress intended for the Director to have standing to obtain judicial review of any allegedly erroneous Board determinations of claims.

ARGUMENT

THE STANDING OF THE DIRECTOR OF THE OFFICE OF WORKERS' COMPENSATION PROGRAMS TO PETITION FOR JUDICIAL REVIEW OF DECISIONS BY THE BENEFITS REVIEW BOARD IS NOT LIMITED TO DECISIONS THAT AFFECT THE DIRECTOR'S PECUNIARY INTEREST OR DISRUPT HER PERFORMANCE OF SPECIFIC ADMINISTRATIVE FUNCTIONS

The Constitution of the United States limits the jurisdiction of federal courts to "Cases" and "Controversies." Art. III, § 2. An essential element of the case-

or-controversy requirement of Article III is standing. *Lujan* v. *Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992). The standing doctrine ensures that "questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982); see also *Lujan* v. *Defenders of Wildlife*, 112 S. Ct. at 2136.

The question whether a person has standing to sue has traditionally been framed as "[w]hether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Sierra Club* v. *Morton*, 405 U.S. 727, 731 (1972). This requirement ensures that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Id.* at 732 (quoting *Flast* v. *Cohen*, 392 U.S. 83, 101 (1968)). Although Congress "may not confer jurisdiction on Art. III federal courts to render advisory opinions, * * * or to entertain 'friendly' suits, * * * or to resolve 'political questions,' * * * because suits of this character are inconsistent with the judicial function under Art. III," Congress may create legally protected interests not present at common law, which in turn give rise to standing. *Sierra Club* v. *Morton*, 405 U.S. at 732 n.3. "The actual or threatened injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'" *Warth* v. *Seldin*, 422 U.S. 490, 500 (1975) (quoting *Linda R. S.* v. *Richard D.*, 410 U.S. 614, 617 n.3 (1973), and citing *Sierra Club* v. *Morton*, 405 U.S. at 732)). Moreover, "the question whether the litigant is a 'proper party to request an adjudication of a particular issue,' * * * is

one within the power of Congress to determine." *Id.* at 732 n.3 (quoting *Flast* v. *Cohen*, 392 U.S. at 100).

A party asserting standing must establish (1) that she suffered a concrete and actual invasion of a legally protected right (an "injury in fact"), (2) that there is a causal connection between the injury and the conduct complained of, and (3) that it is likely that the injury will be redressed by a favorable decision. *Lujan* v. *Defenders of Wildlife*, 112 S. Ct. at 2136. The instant case concerns the court of appeals' conclusion that petitioner did not establish that she suffered an injury in fact.[6]

Congress permits "[a]ny person adversely affected or aggrieved by a final order of the Board [to] obtain a review of that order in the United States court of appeals." 33 U.S.C. 921(c). As the court of appeals noted, Section 21(c) of the Longshore and Harbor Workers' Compensation Act thereby codifies, in effect, the Article III threshold requirement that a person have suffered an injury in fact, economic or otherwise, in order to have standing to appeal. Pet. App. 9a & n.1. Thus, the question for the Court is whether the Director has a stake in the adjudication of compensation claims under

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[6] The other two factors necessary to establish standing are present in this case. There is a causal connection between the allegedly erroneous determination of the claimant's compensation and the injury to the Director's interests under the Act (including ensuring fair compensation to claimants, payment by employers, and accurate claim adjudications). The Director's injury will be redressed by a judicial ruling correcting the erroneous compensation determination, which would yield an order that the claimant be accurately compensated through additional payments. And the compensation dispute is "otherwise justiciable" because the interests of respondent and the claimant are adverse as well. See *Sierra Club* v. *Morton*, 405 U.S. at 731.

the Act sufficient to give her standing to seek judicial review of an allegedly erroneous ruling by the Board.

Congress authorized the Director to participate in appeals of Board decisions to the courts of appeals under 33 U.S.C. 921(c), by providing that the Secretary shall appoint attorneys to represent him in "any court proceedings under section 921." 33 U.S.C. 921a. Congress did not indicate an intent to limit such participation only to issues that directly affect the Secretary's pecuniary interest or disrupt a specific administrative function, as the court of appeals held. Rather, through the Act, Congress imposed a variety of legal duties on the Director that give her a significant stake in the outcome of claim adjudications and vest her with standing to seek review of erroneous rulings in the adjudication process.

A. The Text And Structure Of The Longshore And Harbor Workers' Compensation Act Indicate That Congress Gave The Director A Stake In Claim Adjudications And Vested Her With Standing To Obtain Judicial Review Of Erroneous Benefits Review Board Rulings

1. The Act Confers Broad Administrative And Enforcement Duties On The Director

In concluding that the Director did not establish an "injury in fact" with regard to her appeal of the partial disability issue (Pet. App. 14a), the court of appeals failed to recognize that the Director participates in this litigation "not as a private individual in any sense, but as the authorized representative of the Department of Labor" who is entrusted with responsibility for the administration of the LHWCA. *Director, OWCP* v. *Eastern Coal Corp.*, 561 F.2d 632, 646 (6th Cir. 1977). The Director's interest is analogous not to that of private parties, but rather to that of other government officials carrying out their public duties under particular statutes. See, *e.g.*, *United States ex rel. Chapman* v. *Federal Power Comm'n*, 345 U.S. 153, 155-156 (1953); *SEC* v. *United States Realty & Improvement Co.*, 310 U.S. 434, 460 (1940); *Coleman* v. *Miller*, 307 U.S. 433, 441-442 (1939); *In re Debs*, 158 U.S. 564, 584-586 (1895); *United States* v. *Federal Maritime Comm'n*, 694 F.2d 793, 800-802 (D.C. Cir. 1982); *United States* v. *Federal Maritime Comm'n*, 655 F.2d 247, 251-252 (D.C. Cir. 1980); cf. *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 607 (1982) (State has parens patriae standing based on the health and well being of its residents in general).

Congress conferred on the Director the broad responsibility of administering the Act, including the authority to make expenditures, appoint personnel, and issue any necessary rules and regulations. 33 U.S.C. 939(a).[7] Congress also conferred enforcement authority

[7] The Secretary promulgated regulations that interpret the Act as granting the Director standing to participate at all stages of the claim adjudication process, including appeals from the Board to the court of appeals. The Director, through the Solicitor of Labor or his designee, may participate in ALJ hearings as an "interested party." 20 C.F.R. 702.333(b). The Director may appeal to the Board as a "party in interest" from ALJ decisions or orders with respect to claims for compensation or benefits arising under the Act. See 33 U.S.C. 921(b)(3); 20 C.F.R. 801.102, 802.201. The terms "party" and "party in interest" are defined to mean "the Secretary or his designee and any person or business entity directly affected by the decision or order from which an appeal to the Board is taken." 20 C.F.R. 801.2(a)(10); see also 20 C.F.R. 802.201(a)(1) (specifying that "[t]he Director, OWCP, when acting as a representative of the Special Fund * * * or, when appealing

on the Director, including authority for district directors to bring actions in district court to enforce compensation awards. 33 U.S.C. 921(d). The Director has been recognized to be the policymaking authority whose views on questions of statutory and regulatory interpretation are entitled to deference from the courts. See *Director, OWCP* v. *General Dynamics Corp.*, 982 F.2d 790, 795 (2d Cir. 1992); *Zapata Haynie Corp.* v. *Barnard*, 933 F.2d 256, 258 (4th Cir. 1991); *Newport News Shipbuilding & Dry Dock Co.* v. *Howard*, 904 F.2d 206, 208 (4th Cir. 1990); *Boudreaux* v. *American Workover, Inc.*, 680 F.2d 1034, 1046 (5th Cir. 1982) (en banc), cert. denied, 459 U.S. 1170 (1983); see also *Potomac Elec. Power Co.* v. *Director, OWCP*, 449 U.S. 268, 278 n.18 (1980) (Board is not a policymaking agency and its interpretations are not entitled to special deference from the courts);[8] cf. *Mullins Coal Co.* v. *Director, OWCP*, 484 U.S. 135, 159-160 (1987) (Director's construction of analogous Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, is entitled to deference); *Martin* v. *OSHRC*,

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a decision or order which affects the administration of one of the Acts, shall be considered a party adversely affected"). The regulations further provide that a "party adversely affected or aggrieved" by a Board decision may seek judicial review in the court of appeals. 20 C.F.R. 802.410(a). The term "party adversely affected or agrieved" includes the Director when the Board's decision is adverse to her position (cf. 20 C.F.R. 802.201(a)(1)), and indeed the regulations specifically provide that the Director, as the designated official "responsible for the administration and enforcement" of the Act, "shall be deemed to be the proper party on behalf of the Secretary of Labor in all review proceedings" in the courts of appeals. 20 C.F.R. 802.410(b).

[8] But see *Sea-Land Serv., Inc.* v. *Rock*, 953 F.2d 56, 59 (3d Cir. 1992); *American Ship Bldg. Co.* v. *Director, OWCP*, 865 F.2d 727, 730 (6th Cir. 1989) (neither Board nor Director is entitled to special deference).

499 U.S. 144, 154 (1991) (deference should be given to Secretary's interpretation of regulation promulgated under Occupational Safety and Health Act, rather than to interpretation by Occupational Safety and Health Review Commission).

By charging the Director with the responsibility for administering and enforcing the compensation system, Congress gave the Director a material interest in ensuring that the Act is construed and applied in a manner consistent with Congress's intent. In creating the LHWCA benefits scheme, Congress did far more than provide for adjudication and vindication of private claims. Congress established the Act to serve as a workers' compensation system. Therefore, it has many of the elements of social insurance, and as such is designed to promote the public interest:

> [T]he entire [workers'] compensation system has been set up and paid for, not by the parties, but by the public. The public has ultimately borne the cost of compensation protection in the price of the product, and it has done so for the specific purpose of avoiding having the disabled victims of industry thrown on private charity or public relief.

3 A. Larson, *The Law of Workmen's Compensation* § 82.41 (1994); 1 *id.* § 1.20 ("like social insurance, but unlike tort, the right to benefits and amount of benefits are based largely on a social theory of providing support and preventing destitution, rather than settling accounts between two individuals according to their personal deserts or blame"); see *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 268 (1977) (LHWCA is remedial legislation that "must be liberally construed in conformance with its purpose, and in a way

which avoids harsh and incongruous results," quoting *Voris* v. *Eikel*, 346 U.S. 328, 333 (1953)).

Ensuring "adequate workmen's compensation benefits" under the Act is "not only essential to meeting the needs of the injured employee and his family, but, by assuring that the employer bears the cost of unsafe conditions, serves to strengthen the employer's incentive to provide the fullest measure of on-the-job safety." H.R. Rep. No. 1441, 92d Cong., 2d Sess. 1 (1972). The Director has important administrative and enforcement responsibilities to further those purposes, and these responsibilities give her standing to petition for review of a Board decision. S. Rep. No. 1125, 92d Cong., 2d Sess. 15 (1972). Cf. *General Tel. Co.* v. *EEOC*, 446 U.S. 318, 326 (1980) (EEOC vindicates public interest as well as private rights in eliminating employment discrimination); *Secretary of Labor* v. *Fitzsimmons*, 805 F.2d 682, 692-693 (7th Cir. 1986) (en banc) (Secretary's interest in bringing an enforcement action under the Employee Retirement Income Security Act is based not only on the duty of protecting individual beneficiaries of specific pension programs, but also on the public interest in protecting "the very integrity, heart and lifeline of the program itself"); *Donovan* v. *University of Texas at El Paso*, 643 F.2d 1201, 1208 (5th Cir. 1981) (Secretary sues to protect public interest under Fair Labor Standards Act).

The Director's statutorily created role confers on her the ability to advance in federal court the public interest in ensuring adequate compensation payments to claimants. Cf. *Heckman* v. *United States*, 224 U.S. 413, 437-444 (1912); *Moe* v. *Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 473-474 (1976); *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 430-431 (1976). Moreover, incorrect claim determinations by the Board

frustrate the Director's duty to administer and enforce the statutory scheme in a uniform manner. The Director is thwarted in her duty to enforce compensation orders that further the purpose of the Act to fairly compensate employees and appropriately charge employers.

Erroneous Board rulings also impair the Director's efficient administration of the statutory program by undermining her authority to resolve compensation disputes without recourse to formal hearings (see 33 U.S.C. 914, 919(c); 20 C.F.R. 702.301 *et seq.*). To preclude the Director from obtaining judicial review of what she believes are erroneous Board rulings would reduce the incentive for employers to view the Director's informal resolution efforts as authoritative, because the employer could proceed to a higher level of review from which the Director could not appeal. Incorrect Board decisions also harm the Director's ability efficiently to administer and enforce the Act because differences between the Board and the Director are perpetuated without assurance of an avenue for judicial resolution.

Such impairments of the Director's ability to fulfill her statutory duties cause her injury in fact. The Director thus stands as a "person adversely affected or aggrieved" by the Board's erroneous ruling in this case, who has standing to petition for judicial review under 33 U.S.C. 921(c). See *Shahady* v. *Atlas Tile & Marble Co.*, 673 F.2d 479, 483 (D.C. Cir. 1982) (Director's standing to petition under 33 U.S.C. 921(c) arises out of her "general supervisory and enforcement interest" under the LHWCA); *Director, OWCP* v. *National Van Lines, Inc.*, 613 F.2d 972, 977 n.6 (D.C. Cir. 1979), cert. denied, 448 U.S. 907 (1980); *Director, OWCP* v. *Bethlehem Steel Corp.*, 949 F.2d 185, 186-187 (5th Cir. 1991) (Director has standing, based in part on substantial responsibilities of

her office and need for national uniformity, to challenge Board ruling as to when total disability becomes partial disability); *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 807 n.4 (3d Cir. 1988) ("the Director's supervisory and enforcement interest should be sufficient to entitle him to participate as a party; his responsibility to oversee the development of a consistent body of law in this area should not depend upon the vagaries of the parties' private, albeit adversary, interests"); cf. *Director, OWCP* v. *Rochester & Pittsburgh Coal Co.*, 678 F.2d 17, 18 n.2 (3d Cir. 1982) (Director has standing under analogous BLBA statutory scheme to petition for review of Board decision based solely on "his responsibility to ensure the proper enforcement and lawful administration of the black lung benefits program"); *Eastern Coal Corp.*, 561 F.2d at 645 (Director is "adversely affected or aggrieved" under 33 U.S.C. 921(c) "in that * * * he is seeking what he deems to be lawful administration of the [BLBA] and assisting claimants * * * whose awards of benefits have been vacated by the Benefits Review Board, as well as defending the regulations he is charged with administering").[9] Moreover, limiting the Director's

[9] In *Director, OWCP* v. *Perini N. River Assocs.*, 459 U.S. 297, 302-305 (1983), this Court noted that the courts of appeals had rejected our standing argument in *Fusco* v. *Perini N. River Assocs.*, 601 F.2d 659 (2d Cir.), vacated and remanded on other grounds, 444 U.S. 1028 (1979), reinstated on remand, 622 F.2d 1111, 1113 (1980), cert. denied, 449 U.S. 1131 (1981); *Director, OWCP* v. *Donzi Marine, Inc.*, 586 F.2d 377, 382 (5th Cir. 1978); and *I.T.O. Corp.* v. *Benefits Review Bd.*, 563 F.2d 646, 648 (4th Cir. 1977) (en banc), reinstating in pertinent part, 542 F.2d 903 (1976) (en banc), vacated and remanded, 433 U.S. 904 (1977). The Court observed that those courts had relied on statutory grounds and did not address the Article III standing issue. 459 U.S. at 302 n.9. In *Perini*, the Court concluded that "the Director has statutory authority to seek review in this Court," but that the Director "*may* not have Art. III standing to argue the merits of [the claimant's] claim because the Director's presence does not guarantee the existence of a justiciable controversy with respect to the merits of [the claimant's] coverage under the LHWCA." 459 U.S. at 304. The Court did not resolve the issue, however, because the claimant was a party respondent under the rules of this Court, and had standing to urge the Court's consideration of the merits of the court of appeals' decision. *Id.* at 304-305.

With regard to the Director's standing as a respondent in the court of appeals, the Fourth Circuit held that the Director is not a proper respondent (see note 4, *supra*), but other courts of appeals have disagreed and held that the Director is properly a respondent to a petition for review of a Board decision. *Goldsmith* v. *Director, OWCP*, 838 F.2d 1079, 1080 (9th Cir. 1988); *Thornton* v. *Brown & Root, Inc.*, 707 F.2d 149, 154 (5th Cir. 1983), cert. denied, 464 U.S. 1052 (1984); *Ingalls Shipbuilding Div., Etc.* v. *White*, 681 F.2d 275, 286-287 (5th Cir. 1982), overruled on other grounds, *Newpark Shipbuilding & Repair, Inc.* v. *Roundtree*, 723 F.2d 399 (5th Cir.) (en banc), cert. denied, 469 U.S. 818 (1984); *Shahady* v. *Atlas Tile & Marble Co.*, 673 F.2d 479 (D.C. Cir. 1982); see also *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 807 n.4 (3d Cir. 1988) (noting strength of *Shahady* rationale, but reserving question). Some of the decisions upholding the Director's standing as a respondent are based on 33 U.S.C. 921(c) and some are based solely on Fed. R. App. P. 15(a), which provides that petitions for review of agency orders must name the agency as a respondent. *Brown & Root, Inc.*, 707 F.2d at 154; *Ingalls Shipbuilding*, 681 F.2d at 282-284.

standing, as the court of appeals did, to only issues that directly affect her pecuniary interest or disrupt a specific administrative function would lead to case-by-case adjudication regarding what constitutes injury to a specific administrative function,[10] and inject additional

[10] Compare the Fifth Circuit's ruling in *Donzi Marine*, 586 F.2d at 381-382 (although resolution of question whether employees of recreational boat industry are covered under LHWCA would allow

uncertainties and inefficiencies into the claim adjudication process.

2. Congress Imposed Specific Duties On The Director With Regard To The Claims Adjudication Process And Assisting Disabled Employees, Which Also Give The Director Standing

In addition to broad administrative and enforcement responsibilities under the Act, Congress charged the Director with certain specific legal duties that promote the public interest in achieving the Act's ocial welfare objectives by assisting claimants both in th adjudication process and thereafter. The Director hall, upon request, provide persons covered by [th Act] with information and assistance relating t the [Act's] coverage and compensation and the rocedures for

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Director to give more certain adv claimants, Director's legitimate administrative interests re ot adversely affected by Board's adverse legal ruling), with t Fifth Circuit's more recent decision in *Bethlehem Steel Corp.*, 9 F.2d at 186-187 (Director's obligation to furnish information to claimants is adversely affected by Board ruling concerning when total disability becomes partial disability, when three courts of appeals had already rejected Board's position).

At bottom, under the rationale of the court below, a court would be permitted to substitute its judgment for that of the Director regarding the impact that a Board decision has on the administration of the LHWCA, thereby leading to great unpredictability. For example, comparison of the Fifth Circuit's ruling in *Bethlehem Steel Corp.*, 949 F.2d at 186-187, and the court of appeals ruling in this case reveals a striking inconsistency. The Fifth Circuit held that the Director has standing to challenge a Board ruling as to when a total disability becomes a partial disability—an issue that is, for present purposes, analytically indistinguishable from the one the Fourth Circuit held that the Director did *not* have standing to raise in this case.

obtaining such compensation and including assistance in processing a claim." 33 U.S.C. 939(c)(1). In addition, the Director polices the legal representation provided to claimants. The Director is responsible for maintaining a list of persons not authorized to represent claimants, which requires her to determine whether such persons have engaged in misconduct or fraud with regard to prior representations. 33 U.S.C. 931. The Director also "may, upon request, provide persons covered by [the Act] with legal assistance in processing a claim." 33 U.S.C. 939(c)(1).

Congress also charged the Director with responsibility for protecting claimants' interests when their cases are resolved short of adjudication, *e.g.*, when the employer pays compensation without issuance of a formal award (33 U.S.C. 914(a)), or when the employer and employee enter into a settlement. In the case of uncontroverted payments, the Director's district director may, upon his own initiative at any time, investigate the case. 33 U.S.C. 914(h)(1), 919(c). District directors also are authorized to review settlements between employers and employees to determine if they are adequate and not procured by duress. 33 U.S.C. 908(i).

The Director has ongoing responsibility to disabled employees already receiving compensation as well. The Director actively supervises the medical care rendered to injured employees, requires periodic reports on such cases, and oversees the quality and appropriateness of the services and charges of medical care providers. 33 U.S.C. 907(b). The Act requires that the Director maintain a list of health care providers not authorized to render services under the LHWCA. 33 U.S.C. 907(c). The Director must provide claimants with "information on medical, manpower, and vocational rehabilitation

services." 33 U.S.C. 939(c). Moreover, the Director must "assist such employees in obtaining the best such services available." *Ibid.* The Director bears responsibility in some situations for directing vocational rehabilitation, furnishing prosthetic appliances, using specified funds to procure rehabilitation services, 33 U.S.C. 939(c)(2), as well as administering a special fund for payment of benefits in specified circumstances, including the supplementation of employers' payments to employees. 33 U.S.C. 908(f), 918(b), 944.

Given her broad responsibilities under the LHWCA and the societal interests inhering in them, the Director has a material interest in the consistent and fair administration and application of the LHWCA beyond the narrow range that the court of appeals acknowledged. An erroneous denial of compensation to a claimant undermines the Director's statutory interest in ensuring the adequacy of compensation payments to further the Act's purposes, including preventing claimants from otherwise burdening public benefit programs.[11] Such a denial may also impair the Director's ability to fulfill her duties to an individual claimant with regard to informal

[11] Indeed, Congress determined that the public interest in adequately compensating injured employees should not be defeated by employers' inducement of employees to surrender such compensation. The Act provides that "[n]o agreement by an employee to waive his right to compensation under this chapter shall be valid." 33 U.S.C. 915(b). The Act also invalidates any agreements by employees to contribute to an employer's benefit fund for purposes of providing compensation or medical services and supplies as required by the LHWCA. 33 U.S.C. 915(a). Any employer who makes such a deduction from the pay of an employee entitled to the benefits of the Act faces criminal prosecution. *Ibid.*

resolutions, settlement, vocational rehabilitation or other services.

By conferring this comprehensive range of public duties on the Director, Congress conferred standing on her to prosecute appeals from claim rulings that she believes have misinterpreted or misapplied the Act. Cf. *In re Columbia Gas Systems Inc.*, 33 F.3d 294, 298-299 (3d Cir. 1994) (U.S. Trustee has standing in bankruptcy case due to statutorily imposed duties to protect public interest); *Washington Utils. & Transp. Comm'n* v. *FCC*, 513 F.2d 1142, 1149-1150 (9th Cir. 1975) (state agency has standing because of duty to protect telephone users); cf. *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 476-477 (1940). By imposing on the Director a legal duty to assist claimants during the claim adjudication process, to ensure the adequacy of compensation payments, and to assist compensation recipients thereafter, Congress gave the Secretary a "sufficient stake" in the outcome of claim adjudication proceedings to press for judicial resolution of the controversy in this case. See *Sierra Club* v. *Morton*, 405 U.S. at 731; cf. *Director, OWCP* v. *Eastern Coal Corp.*, 561 F.2d at 641-648 (discussing Secretary's analogous duties under Black Lung Benefits Act).

B. The History Of The Act Confirms Congress's Intention To Confer On The Director Standing To Seek Judicial Review Of Board Rulings.

The history of the LHWCA strongly supports the conclusion that the Director has standing under 33 U.S.C. 921(c) to obtain judicial review of a Board order that incorrectly rejects a compensation claim under the Act.

1. The current procedures for adjudication of compensation claims under the LHWCA reflect substantial modifications implemented by the 1972 amendments to the Act. See Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, Pub. L. No. 92-576, 86 Stat. 1251. Before those amendments, OWCP deputy commissioners conducted hearings and issued compensation orders in disputed cases. Those decisions were reviewable in an injunctive action against the deputy commissioner in district court, with further review by appeal to the court of appeals under 28 U.S.C. 1291. See *Kalaris* v. *Donovan*, 697 F.2d 376, 381-382 (D.C. Cir.), cert. denied, 462 U.S. 1119 (1983). The deputy commissioner was denominated as a respondent in such district court proceedings. See former Section 21(b), 44 Stat. 1436 (1927) (codified at 33 U.S.C. 921(b) (1970)). It was clear that the deputy commissioner had standing to appeal under 28 U.S.C. 1291 from a district court ruling enjoining his decision, even in the absence of an appeal by another party. See *Henderson* v. *Glens Falls Indem. Co.*, 134 F.2d 320 (5th Cir.), cert. denied, 319 U.S. 756 (1943).

The 1972 Amendments transferred the authority to conduct hearings from deputy commissioners (redesignated "district directors" by regulation, see note 2, *supra*) to ALJs. The Amendments also replaced district court injunctive actions with appeals to the newly created Benefits Review Board and subjected Board rulings to judicial review in the courts of appeals under Section 21(c) of the Act, 33 U.S.C. 921(c). The Board thus "performs a review function [under the new regime] identical to that which the District Courts performed" before the 1972 Amendments. *Kalaris* v. *Donovan*, 697 F.2d 376, 382 (D.C. Cir.), cert. denied, 462 U.S. 1119 (1983).

Congress could hardly have intended these changes to divest the Act's administrator of her pre-1972 authority to seek review in the courts of appeals of decisions on benefits claims that are adverse to her position. Cf. *Shahady*, 673 F.2d at 485; *Eastern Coal Corp.*, 561 F.2d at 649 ("[w]e do not find in the [1972 Amendments] any Congressional intention * * * to compel the Secretary or his duly designated representative to accept [Board decisions] without recourse to the courts when he conscientiously disagrees"). That result would be directly at odds with a major purpose of the 1972 Amendments, which was to augment the Director's responsibilities. See S. Rep. No. 1125, *supra*, at 13-14 (placing responsibility for hearings with ALJs will better enable deputy commissioners to perform their administrative responsibilities under the Act); see generally *id.* at 14-15 (Amendments were intended to ensure Director's active involvement at all stages of claim-processing under LHWCA). The 1972 Amendments specifically increased the Director's responsibility for providing services to employees by requiring her to provide assistance to them in processing a claim. H.R. Rep. No. 1441, *supra*, at 12. This amendment was intented to ensure that the "assistance be all inclusive and enable the employee to receive the maximum benefits due to him without having to rely on outside assistance other than that provided by the Secretary." *Id.* at 13.[12]

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[12] Some courts have suggested that Congress intended to distinguish between administrative standing and judicial standing when it provided "part[ies] in interest" with a right to administrative review by the Board, 33 U.S.C. 921(b)(3), but provided "person[s] adversely affected or aggrieved" with a right to judicial review, 33 U.S.C. 921(c). See *I.T.O. Corp.* v. *Benefits Review Board*, 542 F.2d at 908; *Ingalls Shipbuilding Div., Etc.* v.

2. That the Director's interest in the resolution of compensation claims is sufficient to confer standing to appeal is further confirmed by the text and legislative history of the Black Lung Benefits Act (BLBA), as amended in 1978, Pub. L. No. 95-239, § 7(h), 92 Stat. 99. The BLBA generally incorporates the procedures of the LHWCA. 30 U.S.C. 932(a). This Court has recognized that "[w]hen several acts of Congress are passed touching the same subject-matter, subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject." *Marchie Tiger* v. *Western Inv. Co.*, 221 U.S. 286, 309 (1911); *Bell* v. *New Jersey*, 461 U.S. 773, 784 (1983). See also *West Virginia Univ. Hosp., Inc.* v. *Casey*, 499 U.S. 83, 100-101 (1991).

The BLBA explicitly provides that "[t]he Secretary shall be a party in any proceeding relative to [a] claim"

White, 681 F.2d 275, 287 (5th Cir. 1982), overruled on other grounds by *Newpark Shipbuilding & Repair, Inc.* v. *Roundtree*, 723 F.2d 399 (5th Cir.) (en banc), cert. denied, 469 U.S. 818 (1984); see also *White* v. *Ingalls Shipbuilding Div., Litton Sys., Inc.*, 12 Ben Rev. Bd. Serv. (MB) 905, 907 (1980). Close examination of the Act refutes that argument. The Act also employs the term "party aggrieved" when referring to administrative review proceedings. See 33 U.S.C. 921(b)(5) (any "party aggrieved" by Board decision may seek review by full Board). And the LHWCA, before the 1972 amendments, authorized "any party in interest" to seek *court* review of compensation orders. 33 U.S.C. 921(b) (1970). These disparate uses of the terms "party in interest" and person or party "aggrieved" weigh against the inference that Congress intended separate tests to apply to the Director's standing to obtain Board review and her standing to obtain judicial review. Moreover, the distinction between administrative and judicial standing is not supported by agency regulations, which employ the "adversely affected or aggrieved" standard in both contexts. See 20 C.F.R. 802.201(a), 802.410(a).

for black lung benefits. 30 U.S.C. 932(k). In 1977, the Senate Committee on Human Resources (the successor to the Committee on Labor and Public Welfare that drafted the 1972 Amendments to the LHWCA) explained that this provision reflects the intent that the Director have standing under both Acts:

> Some question has arisen as to whether the adjudication procedures applicable to black lung claims incorporating various sections of the amended Longshoremen's and Harbor Workers' Compensation Act confers standing upon the Secretary of Labor or his designee to appear, present evidence, file appeals or respond to appeals filed with respect to the litigation and appeal of claims. In establishing the Longshore Act procedures it was the intent of this Committee to afford the Secretary the right to advance his views in the formal claims litigation context whether or not the Secretary had a direct financial interest in the outcome of the case. The Secretary's interest as the officer charged with the responsibility for carrying forth the intent of Congress with respect to the Act should be deemed sufficient to confer standing on the Secretary or such designee of the Secretary who has the responsibility for the enforcement of the Act, to actively participate in the adjudication of claims before the Administrative Law Judge, Benefits Review Board, and appropriate United States Courts.

S. Rep. No. 209, 95th Cong., 1st Sess. 21-22 (1977) (emphases added). The Conference Committee adopted the Senate provisions regarding the claim adjudication procedures, specifically including the provision that "made future amendments to the Longshoremen's Act procedures automatically applicable to black lung

claims." H.R. Conf. Rep. No. 864, 95th Cong., 1st Sess. 22-23 (1978); see 30 U.S.C. 932(a).

This unambiguous expression of congressional intent to confer standing on the Secretary under the LHWCA, regardless of any pecuniary interest in a particular case, should be given considerable weight by this Court in deciding this case.[13] See *Ingalls Shipbuilding Div., Etc.* v. *White*, 681 F.2d 275, 286-287 & n. 10 (5th Cir. 1982) (1977 report accompanying BLBA amendments is persuasive extrinsic evidence of Congress's intent under 1972 LHWCA amendments), overruled on other grounds by *Newpark Shipbuilding & Repair, Inc.* v. *Roundtree*, 723 F.2d 399 (5th Cir.) (en banc), cert. denied, 469 U.S. 818 (1984). The Senate Committee's statement is of

[13] Several courts of appeals, even before the addition of 30 U.S.C 932(k), recognized the Director's standing to petition for review of Board decisions on black lung claims. See, *e.g.*, *Krolick Contracting Corp.* v. *Benefits Review Bd.*, 558 F.2d 685, 689-690 (3d Cir. 1977); *Director, OWCP* v. *National Mines Corp.*, 554 F.2d 1267, 1271-1272 (4th Cir. 1977); *Director, OWCP* v. *Alabama By-Products Corp.*, 560 F.2d 710, 717 (5th Cir. 1977); *Eastern Coal Corp.*, 561 F.2d at 646; *Director, OWCP* v. *Peabody Coal Co.*, 554 F.2d 310, 336-338 (7th Cir. 1977). Those decisions gave at least some weight to the Director's interest in obtaining reimbursement from the mine operators for benefits paid from the Black Lung Disability Trust Fund, although some of the decisions also predicated standing on the Director's other administrative functions under the BLBA. See *Eastern Coal Corp.*, 561 F.2d at 643-645; *Alabama By-Products Corp.*, 560 F.2d at 717. As noted, the Third Circuit has since accorded the Director standing, in a case in which the Director lacked such a pecuniary interest, solely because of "his responsibility to ensure the proper enforcement and lawful administration of the black lung benefits program." *Director, OWCP* v. *Rochester & Pittsburgh Coal Co.*, 678 F.2d 17, 18 n.2. (1982).

special significance in the circumstances at issue in this case because it is not an after-the-fact characterization of a prior statute; rather it is a statement about Congress's intent with regard to the manner in which a claims adjudication process is to function at the time Congress reexamined that process with regard to another benefits program that is subject to the same process. The same rules of practice and procedure before the Board (20 C.F.R. 802.101 *et seq.*) apply to claim adjudications under the LHWCA and the BLBA. To recognize the Director's standing under one Act but not the other would be inconsistent with congressional intent and would introduce unwarranted discrepancies into the implementation of the statutory mandates.

A straightforward, realistic approach to the question of the Director's standing, in light of the full measure of the Director's statutory responsibilities and in accord with the Constitution, permits the Director to petition for review of what she concludes, in the exercise of her expert judgment, to be an erroneous Board ruling in a compensation award controversy.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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